



James J. R. Talbot
Senior Attorney

Room 3A230
One AT&T Way
Bedminster, New Jersey 07921-0752
908 532-1847
FAX 908 532-1218
EMAIL jjtalbot@att.com

May 8, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: AT&T Corp. Emergency Petition for Settlements Stop Payment Order
and Request for Immediate Interim Relief and Petition Of WorldCom, Inc.
For Prevention of "Whipsawing" On the U.S.- Philippines Route.
(IB Docket No. 03-38.)**

Dear Ms. Dortch:

This letter responds to the letter dated April 2, 2003 from Albert Halprin, counsel to Smart Communications, Inc. ("Smart") concerning amounts allegedly owed to Smart by AT&T and Smart's efforts to terminate the International Telephone Service Agreement between Smart and AT&T.¹

Smart, the largest mobile carrier in the Philippines and a wholly owned subsidiary of the Philippine Long Distance Company, has blocked virtually all traffic from AT&T for the past three months in retaliation for AT&T's refusal to accept an unjustified rate increase. The Bureau's March 10, 2003 Order accordingly determined that Smart is engaging in whipsawing in violation of the International Settlements Policy and requires AT&T and all other U.S. carriers to suspend all termination payments for switched voice services to Smart until the circuits of AT&T and other affected U.S. carriers are no longer blocked and service is fully restored.

Smart's unlawful whipsaw conduct cannot be justified by the payment issues raised by Mr. Halprin's letter, which have nothing to do with Smart's blockage of traffic, and are being resolved in accordance with normal industry practice. Mr. Halprin also refers to Smart's efforts to terminate its service agreement with AT&T, which similarly provide no justification for its anticompetitive conduct. Far from mitigating Smart's whipsaw of AT&T, Smart's notice of termination seeks to extend that whipsaw indefinitely by preventing AT&T from terminating any

¹ Letter dated April 2, 2003 to Marlene H. Dortch, Secretary, FCC, from Albert Halprin, Counsel to Smart & Attachments.

future traffic on Smart's network. Smart's attempt to continue its unlawful whipsaw in this way fails to avoid the requirements of the Bureau Order. The Order states that service must be fully restored before the suspension of U.S. carrier payments to Smart may be lifted, which requires the continuation of the service agreement between AT&T and Smart and the rescission of Smart's notice of termination.

Payment issues: Smart fails to justify its unlawful blockage of AT&T's traffic for the past three months by raising amounts owed for the years 2000 and 2001, which is an unrelated matter that is being resolved by AT&T and Smart in accordance with normal industry practice. The facts are as follows.

AT&T currently has outstanding payments due to Smart of more than \$4.3 million, of which approximately \$3.7 million comprises outstanding payments due to Smart for bilateral traffic exchanged between AT&T and Smart for 2002 and January 2003. The remaining amount of \$637,786.77 is for 2000 and 2001. AT&T has already paid Smart more than \$4.2 million for 2000 and 2001 (of which approximately \$1.2 million was for 2000 and approximately \$3 million was for 2001). Pursuant to the normal industry practice, AT&T conducted its own audits after Smart notified AT&T of the outstanding amount of \$637,786.77 for 2000 and 2001. Based on those audits, AT&T has previously disputed that amount with Smart. After further review, however, AT&T has determined that the above-stated outstanding amount for those years is correct, and has notified Smart accordingly.

This situation is not unusual. It is normal for carriers to review their payments made and received and to raise any discrepancies with the other carrier. Such discrepancies are typically investigated and resolved between the parties.

Because the March 10 Order requires the suspension of payments for switched voice services to Smart and other Philippine carriers engaging in whipsaw conduct, AT&T is prohibited from making payment to Smart of the outstanding amount of \$637,786.77 for the years 2000 and 2001, just as it is also prohibited from making payment of the \$3.7 million due to Smart for the year 2002 and for January 2003. However, AT&T will pay these amounts to Smart when it is authorized to do so.

Termination Letter: Mr. Halprin also contends in his letter that Smart has acted in "compliance" with its service agreement with AT&T "in connection with the termination of that agreement," but this retaliatory action is obviously part of the whipsaw addressed by the Bureau Order. The letter from Smart to AT&T dated February 11, 2003 that is attached to Mr. Halprin's letter makes clear that this action, like Smart's blockage of AT&T's traffic since February 1, is in retaliation against AT&T's efforts to negotiate lower termination rates. Smart's letter contends that because AT&T is "not amenable" to its proposed rate increase and has rather requested a lower termination rate of 10 cents, AT&T is "not prepared to negotiate in earnest" or "willing, in good faith, to consider our business perspective" and therefore "the parties cannot mutually agree on the new rates." Smart goes on to state: "Accordingly, we have no other option but to terminate the International Telecommunications Service Agreement (ITSA) dated 17 September

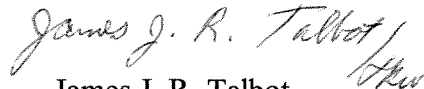
1996. This will serve as our formal notice of termination effective 180 days from your receipt, in accordance with Section 12 of the ITSA.”

Smart thus seeks to prevent AT&T from terminating all further traffic on its network because AT&T has acted in accordance with the Commission’s longstanding direction that U.S. carriers should “negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends.” *Regulation of International Settlement Rates*, 6 FCC Rcd. 3552, ¶1 (1991). To AT&T’s knowledge, Smart has not sought to terminate its agreements with any other U.S. carrier. Termination of the service agreement with Smart, therefore, would severely disadvantage AT&T in competing against all other U.S. carriers on the U.S.-Philippines route and cause major harm to AT&T.

Smart cannot escape liability for the permanent blockage of AT&T’s traffic it seeks to impose by contending that it takes this action in “compliance” with the termination provisions of its service agreement with AT&T. As Smart’s February 11 letter makes clear, the intended effect of this action is to retaliate for AT&T’s efforts to negotiate lower termination rates by preventing AT&T from terminating any traffic with Smart in the future.

The Bureau Order states that the suspension of U.S. carrier payments to Smart “will remain in effect until all affected circuits of U.S. carriers are no longer blocked, and service is fully restored.” (Order, DA 03-38, rel. Mar. 10, ¶18.) The full restoration of service particularly requires the continuation of the service agreement that Smart has improperly sought to terminate. Thus, Smart must rescind its notice of termination to AT&T before the suspension of U.S. carrier payments may be lifted.

Respectfully submitted,


James J. R. Talbot
Senior Attorney

cc: James Ball, FCC
Lisa Choi, FCC
Patricia Cooper, FCC
Anita Dey, FCC
Claudia Fox, FCC
Anna Gomez, FCC
Jennifer Manner, FCC
Kathy O'Brien, FCC
Barry Ohlson, FCC
Jackie Ruff, FCC
Albert Halprin, Halprin Temple
Scott Shefferman, WorldCom
Thomas Leuba, Sullivan & Cromwell
Henry Goldberg, Goldberg, Godles, Wiener & Wright
Patricia Paoletta, Wiley Rein & Fielding
William Pamintuan, Digitel
Gary Olivar, Bayantel.
Gregory Staple, Vinson & Elkins
Michael Mendelson, Jones Day